



## CORNERSTONE WILLS

# BENEFITS OF THE NRB DISCRETIONARY WILL TRUST

### The impact of the October 2007 Pre-Budget Report

The pre-budget report of 9<sup>th</sup> October 2007 introduced a transferable Nil-Rate Band (NRB) for married couples and civil partners.

Before the announcement, best advice would always have been to use the NRB IOU Discretionary Will Trust (NRB DT), set up on first death, but now the situation needs closer attention. The advice will depend on your own circumstances at the time of first death. So, although some of the situations described below may not apply to you today, a lot of them probably will apply to you in the future and on first death.

As circumstances change, it is best to have the most flexible Will possible leaving all options open. In this way the final decisions on saving tax, succession planning and wealth protection can all be taken after first death. If, taking into account the circumstances at such time, it is deemed detrimental for the NRB DT to run, then the trustees have up to two years to decide to appoint all trust funds to the survivor, with the same tax impact as if there had been no trust.

Some of the situations where it will still be desirable to use the NRB on first death include:

#### Indexed IOU

Historically the "growth" or index-linking of the IOU has outpaced the increase in the value of the NRB. You may feel that this will continue to be the case and want to implement the indexed IOU to increase the tax savings (as the growth of the IOU will be held in trust and, therefore, outside of the taxable estate of the survivor).

#### High Growth Assets

Some assets are likely to grow in value to be worth more than the anticipated rise in the NRB; this might include shares in a business or high-performing investment funds. If no use is made of the NRB on first death, investment growth will remain in the estate of the survivor.

#### Remarriage after first death

The pre-budget report states that only one NRB can be carried forward to second death, regardless of the number of times that you have been married. However, if a NRB DT is implemented on the death of each spouse then an additional tax saving of £120,000 (2007/08 rates) can be secured per spouse.

#### Unmarried Persons

The pre-budget report is explicit in that the new rules do not apply to unmarried couples or those yet to enter a Civil Partnership. Where the joint net estate is over the NRB (£300,000 in 2007/08) then the NRB DT should be implemented to make up to £120,000 of tax savings.

#### Family Heirloom

You may view the NRB DT as a family heirloom, to be passed down to benefit future generations. It can benefit the family without being in their estate for inheritance tax purposes.

## Domiciled and Non-Domiciled Spouses

If the first spouse to die is domiciled and the surviving spouse is deemed non-domiciled for IHT, then the amount that can pass tax-free to the survivor is the NRB (£300,000 in 2007/08) plus a foreign spouse allowance (£55,000); everything else is subject to 40% tax. This also means that the domiciled spouse has used their NRB on 1<sup>st</sup> death, i.e. no carry-forward will be possible, but only one NRB is available against the whole estate on 2<sup>nd</sup> death. The NRB DT should be used to save £120,000.

## Long Term Care Costs

It is estimated that more than 70,000 homes are sold each year to fund care costs. Having an IOU or charge on your property can prevent assets (up to the value of the NRB) being taken into consideration should the survivor need to be assessed for long term care fees.

## Divorce or Remarriage & Step-children

If you remarry, whether through divorce or widowhood, and then be the first to die out of the new marriage, all of your estate could pass to your second spouse's beneficiaries, e.g. your step-children, leaving your own children with nothing. Setting up the NRB DT on your death enables you to preserve the NRB for your own children.

## Funding education or tax-free gifts

You may wish to use the NRB DT to invest for growth and to "sprinkle" income to the beneficiaries in order for them to pay for education, for example, or make a gift to children or grandchildren out of the trust. Such payments are tax-free and not treated as normal gifts which exceed the annual allowance (currently £3,000) for which the donor must survive for 7 years before they are completely tax-free.

## Generation Skipping

Having a NRB DT set up where the beneficiaries are the spouse, children and descendants means that, at the discretion of the trustees, funds can be distributed to grandchildren without aggravating the IHT position of your children.

## Easier Probate

Although probate is fairly complicated when implementing the NRB DT (and this is why we recommend Kings Court Trust Corporation) it appears from HMRC Guidance Notes that probate on 2<sup>nd</sup> death where the DT hasn't been implemented could be much more complicated. The result may be that any carry-forward of the unused NRB will remain unclaimed, especially where non-professionals act as administrators to the estate. This is because the administrators of the second to die need to revisit the estate of the first to die (and 7 years prior to death) to determine the unused NRB and then submit the relevant forms/documentation to HMRC. Where there are many years between deaths this may be impossible to do.

## Option to "opt out"

The trust includes a clause which enables the trustees to decide not to create the trust on 1<sup>st</sup> death if the circumstances of the estate and the surviving spouse are such that it would be less beneficial to the estate if the Trust were established. This decision can be made on 1<sup>st</sup> death.

HMRC practice and the laws relating to taxation are complex and subject to individual circumstances and changes which cannot be foreseen. This Note is therefore appropriate for use based on present circumstances. It is no way exclusive and should only be taken as an outline. Whilst every effort is made to ensure that this information is helpful, accurate and correct, it may change or may not apply to your own personal circumstances. Before taking any action, you should seek appropriate professional advice, as Cornerstone Wills cannot accept responsibility for any action taken on the basis of this information alone.

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